# IN THE HIGH COURT OF BOMBAY AT PANAJI

COMPANY APPLICATION NO. 51 OF 2006
IN
COMPANY PETITION NO. 1 OF 2001

Venkatesh K. Patil,
Employee of National Auto Accessories
Ltd., Presently lodged at Central Jail,
Aguada. ..... Applicant

***Versus***

M/s. National Auto Accessories Ltd.,
St. Jose De Areal,
Salcete, Goa. ..... Respondent

Mr. J. A. Lobo, Amicus Curiae.
Ms. Amira Razaq, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.
Date:- 23rd February, 2007.

ORAL ORDER

This appeal is filed under Rule 164 of the Companies (Court) Rules, 1959, against the Order dated 16.12.2005, by which the Official Liquidator has disallowed the claim made by the appellant in the sum of Rs.1,49,664/- but has allowed the appellant to be paid a sum of Rs.23,509/-.

2. The appellant was working as a helper on a monthly salary of Rs.3,118/- with the Company in liquidation. The appellant had filed the said claim before the Official Liquidator, after claims were called for in terms of Rule 147 and 148 (1) of the said Rules. The appellant filed his claim for Rs.1,49,664/-, which according to the appellant, represents his unpaid wages

from 01.07.1997 till 10.04.2001.

3. Shri Lobo, the learned Amicus Curiae, has firstly submitted that the impugned Order does not disclose any grounds or reasons which were required to be stated in terms of Rule 163 of the aforesaid Rules. I find that there is substance in the said submission of Shri Lobo. Rule 163 of the aforesaid Rules provides that the Official Liquidator will investigate the claims made and is required in writing to admit or reject the proof of the claim made in whole or in part and where he rejects a proof wholly or in part, he is required to state the grounds of rejection to the creditor in Form No. 69. That is the substance of Rule 163 of the said Rules, which admittedly does not appear to and have been complied with by the Official Liquidator. It is hoped that in future, the Official Liquidator will take note of the provision of Rule 163 of the said Rules and act scrupulously in accordance therewith while rejecting the claims made by the creditors.

4. However, for the view to be taken, it is not necessary to remand the case to the Official Liquidator. In the affidavit in reply filed by the Official Liquidator, the Official Liquidator has stated that the appellant has claimed his salary for the period from 01.07.1997 to 10.04.2001. According to him, the appellant is not entitled to any salary from the Company in liquidation beyond 09.07.1997.

5. On behalf of the appellant, reliance has been placed on ***Oswal Agro Furane Ltd. & anr. v. Oswal Agro Furane Workers Union & Ors. (2005 I CLR 816)***. Reliance is also placed on earlier decisions of this Court in the case of ***Shree Madhav Mills Ltd. (1967 BCI (0) 146)*** and that of the Delhi High Court in the case of ***Clifton Electroniks & anr. v. Lt. Governor & Ors. (1996 II CLR 135).***

6. On the other hand, on behalf of the Official Liquidator, reliance has been placed on ***Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. & anr. [(2005) 13 S.C.C. 777)***. It is the contention of the appellant that the settlement dated 09.04.2001, was not binding on the appellant and, therefore, the appellant is entitled for his salary/dues from 01.07.1997, which remained unpaid to him till the date of actual closure of the Company, being 10.04.2001. Learned Counsel contends that the said settlement has resulted in closure of the Company and the mandate of law, which was required to be followed, was not followed in the case and it has resulted in retrenchment of workers. On the other hand, it is submitted by learned Advocate Ms. Razaq, and in my view rightly, that the case of ***Oswal Agro Furane Ltd.,*** (supra), is clearly distinguishable and cannot be applied to the facts of the case at hand. Learned Advocate Ms. Razaq further submits that the closure and retrenchment in that case were in

violation of the relevant provisions of the Industrial Disputes Act, 1947, and they were challenged before the High Court and which is not the case at hand.

7. There is no dispute that the appellant was a member of Goa Trade and Commercial Workers Union, which was a party to the settlement dated 09.04.2001, arrived between National Auto Accessories Ltd., the Company in liquidation, and its workers represented by the said Union. It is admitted at page 10 of the paper book, that the appellant was a member of the said Union. The appellant has produced a receipt, which is at page 10 and which the appellant executed for having received a sum of Rs.11,397/-, which has been admittedly paid to him in terms of the said settlement and as shown on the schedule annexed to the said settlement.

8. The recitals to the said settlement show that the said Company in liquidation was not doing well and was referred to the Board of Industrial and Financial Reconstruction and was declared as a Sick Industrial Establishment, under the provisions of the Sick Industrial Companies (Special Provisions) of the Act, 1985, and in the year 1995, was operating under Rehabilitation Scheme approved by the said Board and in spite of that, the Company continued to incur heavy financial losses due to several factors including adverse market conditions in automobile industry.

9. On 09.07.1997, the said Union went on a strike, as a result of which, the manufacturing activity came to a standstill. On 10.07.1997 the appellant came to be suspended. On 14.04.1998, the strike was withdrawn but the Company imposed a lockout on the same day. It appears that prior to that, the Company had made known to the Union and its workmen about the financial position of the Company and had invited them in its efforts for revival of the operations of the company, but the Union and its workmen had expressed their inability to come forward with any proposal for revival of the operations of the Company and that is the reason why the Company declared a lockout on 14.04.1998. Subsequently, at the instance of the financial institutions, the said Board recommended that the Company be wound up in the absence of any rehabilitation proposals, which was forwarded to the concerned High Court for proceedings/winding up Orders.

10. Subsequently, there were discussions between the Management and the Union as regards the closure of the factory and with the intervention of the Conciliation Officer, the said agreement/settlement dated 09.04.2001 was arrived at, by which, the employees of the Company were to be paid the dues mentioned against their names in the schedule annexed to the said Agreement. The said Agreement also shows that the workmen were deemed to have been properly relieved from the services of the Company on the closure of the last working day on 09.07.1997.

11. Admittedly, the said agreement dated 09.04.2001, is in full force and effect as on date, the same not having been challenged in a manner known to law. In ***Oswal Agro Furane Ltd., & anr.*** (supra), certain findings of the Punjab & Haryana High Court, were challenged and the appeal filed was dismissed by the Supreme Court. In other words, the findings were upheld. The said findings are as follows:

> "1. As the management had not applied for prior permission to close down the industrial undertaking as is mandatorily required under Section 25-O of the Act, the purported notice dated 29.5.1996 was illegal.
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> 2. The closure of the industrial undertaking of the appellant being illegal, the workmen were entitled to all the benefits in terms of sub-section (6) of Section 25-O of the Act. Although the settlement dated 14.6.1996 took place as a result of the purported closing down of the industry, a valid closure itself being a foundation of such settlement and it being illegal and void and, thus, cannot be sustained in law.
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> 3. Closure of the industrial undertaking resulting in retrenchment as contained in Section 25-N of the Act envisages fulfillment of two conditions precedent therefor, namely, (1) three months' notice/notice pay in lieu thereof; and (2) prior permission of the appropriate Government and both being mandatory in

nature; the retrenchment of the workmen was illegal as prior permission therefor had not been sought from the State.

4. The provisions of Section 25-J, 25-N and 25-F should be read conjointly with Section 25-N of the Act.

5. Although Section 18 of the Act makes a settlement binding on all workmen but such settlement cannot be entered into in contravention of the provisions of Chapters VA and VB of the Act."

12. In ***Kapra Mazdoor Ekta Union*** (supra), the Apex Court observed thus :

"22. Learned counsel for the appellant then submitted that the settlement was not arrived at with the assistance and concurrence of the Conciliation Officer. It was submitted, relying upon the decision of this Court in *Bata Shoe Co. (P) Ltd. v. D. N. Ganguly* that a settlement which is made binding under Section 18(3) of the Act on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the Conciliation Officer. Such a settlement brought about

while conciliation proceedings are pending, are made binding on all parties under Section 18 of the Act. Reliance was placed on the judgment of this Court in *Workmen v. Delhi Cloth and General Mills Ltd.*

23. Learned counsel for the respondents did not dispute the legal position as it emerges from these two judgments. It was submitted that the facts of this case clearly establish that the Conciliation Officer intervened when there was considerable labour unrest and brought the parties to the negotiating table. Several meetings were held, some of them in the chambers of higher officials of the Labour Department, and ultimately a settlement was worked out. This is quite apparent from the fact that the terms of settlement have also been signed by the Conciliation Officer, apart from the representatives of the Management and representatives of the two workers' unions. We entertain no doubt that the settlement was brought about in the course of conciliation proceedings with the assistance and concurrence of the Conciliation Officer."

13. There can be no dispute that a settlement arrived at in terms of sub-section (3) of Section 18 of the Industrial Disputes Act, 1948, is binding on all the parties to the settlement. As already stated, the settlement between the parties is in full force and effect. There is no challenge to it till date. In case the strike resorted to by the Union was illegal, then obviously, the appellant would not have been entitled to wages for the period of the strike. The appellant was also suspended on next date. If the strike was illegal, then the lockout could not be faulted. The parties realising this situation as well as financial condition of the Company, arrived at the said settlement. The said settlement, as already stated, is in full force and effect and as long the same was not challenged, the same is binding upon the appellant having been a member of the said Union, which was a party to the said settlement and having agreed to receive Rs.11,397/- by way of final settlement of his dues, no further claim on behalf of the appellant could have been entertained by the Official Liquidator. It is admitted that the sum of Rs.11,397/-, has been received by the appellant.

14. Learned Amicus Curiae, on behalf of the appellant, drawing my attention to page 10 i.e. the receipt, submits that the appellant had received the amount under protest. However, no receipt in original has been produced for my perusal. Learned Advocate on behalf of the Official Liquidator states that there is no such receipt in the records of the Official Liquidator.

Nevertheless, the settlement shows that it was by way of full and final settlement of the dues of the workmen of the Company in liquidation. That was not under protest.

15. Learned Amicus Curiae submits that the Official Liquidator has not given any reasons why the appellant is directed to be paid Rs.23,509/-. As regards this Rs. 23,509/- being paid to the appellant, learned Advocate Ms. Razaq, on behalf of the Official Liquidator, submits that the said amount adjudicated in favour of the appellant, represents old dues payable to him other than Rs.11,397/-, paid under the settlement and which dues were reflected in the statement of affairs filed by the Ex-Directors before the Official Liquidator. The payment of the said amount of Rs.23,509/- is not the subject matter of this appeal and, therefore, I need not go into further details as regards the same.

16. In view of the above, the appeal is hereby dismissed. A copy of the Order be sent to the Superintendent of Jail to be served on the appellant who is undergoing imprisonment. Fees payable under the Legal Aid Scheme, be paid to learned Advocate Shri Lobo.

N. A. BRITTO, J.

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